



REC'D TN
REGULATORY DIV.

BellSouth Telecommunications, Inc. 615 214-6301
Suite 2101 Fax 615 214-7406
333 Commerce Street
Nashville, Tennessee 37201-3300

Guy M. Hicks
General Counsel

'00 APR 18 PM 3 57

April 18, 2000

EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *BellSouth Telecommunications, Inc.'s Tariff Filing to Reduce Grouping Rates in
Rate Group 5 and to Implement a 3% Late Charge*
Docket No. 00-00041

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Motion to Compel. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

POSTED
4/20/00

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

REC'D TH
REGULATORY AUTH.

In Re: *BellSouth Telecommunications, Inc.'s Tariff Filing to Reduce Grouping Rates in
Rate Group 5 and to Implement a 3% Late Charge*

'00 APR 18 PM 3 57

Docket No. 00-00041

EXECUTIVE SECRETARY

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO COMPEL

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") respectfully moves that the Tennessee Regulatory Authority ("the Authority") compel the Consumer Advocate Division ("CAD") to respond fully and fairly to BellSouth's discovery requests. Served on March 23, 2000, BellSouth's First Data Requests to Consumer Advocate Division seek information relevant to the issues in this proceeding. Rather than providing substantive responses to most of these requests, the CAD either raised objections that lack merit or simply provided legal argument in response to questions seeking the factual basis for the CAD's contentions. In some instances, the CAD refused or simply failed to provide any response whatsoever.

In response to thirty-nine detailed data requests propounded by BellSouth, the CAD failed to produce a single document. BellSouth, on the other hand, provided hundreds of pages of documents in response to the CAD's discovery. BellSouth has responded in good faith to the CAD's discovery. Because the legal arguments provided by the CAD's responses are irrelevant to the issues at hand, and in an effort to move this case forward in an expeditious manner, BellSouth is willing to withhold enforcing its Motion to Compel if the Authority denies the CAD's Motion to Compel. Otherwise, the Authority should order the CAD to respond in full to each of BellSouth's data requests. The Authority should specifically order the CAD to produce

documents responsive to Data Requests 1, 2, 5, 7, 8, 10, 11, 12, 14, 16, 17, 18, 20, 23, 25, 27, 30, 31, 33, 35, 37, 38 and 39, or, in the alternative, should prohibit the CAD from introducing any such documents into the evidentiary record.

In addition, the CAD should be ordered to respond fully and fairly to the following Data Requests.

II. ARGUMENT

Data Request No. 2 Does the CAD contend that the late payment charge in BellSouth's proposed tariff is a charge or rate for basic local exchange telephone service(s)? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Data Request No. 5 Does the CAD contend that the late payment charge in BellSouth's proposed tariff is a charge or rate for non-basic service(s)? If so, please explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

The CAD produced no documents in response to either of these requests. In its response to Data Request No. 2, the CAD stated that "... BellSouth already has these facts and documents in its possession, and the Consumer Advocate Division objects that BellSouth's request is unduly burdensome." BellSouth has no way of determining what documents "in [BellSouth's] possession" the CAD is referring to. BellSouth's requests are straightforward. The questions relate directly to the primary issue in this case, and the CAD's conclusory statement that BellSouth "already has these facts and documents in its possession" is simply not responsive. Moreover, the CAD's responses indicate that the CAD contends that the late payment charge in BellSouth's proposed tariff is a charge or rate for both basic (see CAD response to Data Request No. 2) and non-basic service (see CAD response to Data Request No. 5), which is nonsensical.

Data Request No. 18 Does the CAD contend that BellSouth receives compensation for late payments through any existing rate(s)? If so, please identify each and every specific rate through which you contend BellSouth receives such compensation, explain in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

Rather than identifying the existing rates through which the CAD contends BellSouth receives compensation for late payments, the CAD simply refers to “[T]he whole all of the rates for services listed in BellSouth’s approved tariffs on file with the Authority.” Does the CAD seriously contend that the 1FR rates for Rate Group 1 – which do not even compensate BellSouth for the cost of providing the service – somehow compensates BellSouth for costs associated with late payments? If the CAD is going to rely on anachronistic, arcane, and defunct rate-of-return principles in this docket, it should be required to identify with specificity each rate that it alleges compensates BellSouth for costs associated with late payments.

Data Request No. 19 Please admit that BellSouth is operating pursuant to an approved price regulation plan.

Rather than acknowledging in good faith that BellSouth is operating pursuant to an approved price regulation plan, the CAD obfuscates by stating, “Denied. There is no articulable plan” and that the plan is “ultra vires, unlawful and voidable.” Obviously, BellSouth is not asking the CAD to agree that its price regulation plan should have been approved. BellSouth is simply attempting to narrow the issues by requesting the CAD to acknowledge that BellSouth is now operating pursuant to an approved price regulation plan.

Data Request No. 24 Please admit BellSouth’s cost of an unbundled loop is more than \$12.15 per month.

Data Request No. 25 Does the CAD contend that BellSouth's cost of an unbundled loop is more than \$12.15 per month? If so, please set forth in detail the factual and legal basis for your contention, identify all facts supporting your contention, and produce all documents supporting your contention.

In response to the straightforward question posed by Request No. 25, the CAD states that it “can neither admit nor deny.” The CAD then goes on to object to the “remainder of this interrogatory as unduly burdensome and is [sic] irrelevant.” With regard to Data Request No. 24, however, the CAD incredibly denied that BellSouth’s cost of a loop is more than \$12.15 per month. Even AT&T’s proposal in the Generic UNE docket acknowledges that BellSouth’s cost for a statewide unbundled loop exceeds \$12.15 per month. In its “response” to Data Request No. 25, the CAD states that it can neither admit nor deny whether BellSouth’s cost of an unbundled loop is more than \$12.15 per month. Clearly, these responses are inconsistent and inadequate. It is both nonresponsive and disingenuous to take the position that BellSouth’s cost for an unbundled loop is less than \$12.15 per month in response to Request No. 24, and then to fail to respond to Data Request No. 25. Nor is the request irrelevant. As the Tennessee Supreme Court has observed, “to be relevant, evidence must tend to prove a material issue.” *Tennessee v. DuBose*, 953 S.W.2d 649, 653 (Tenn. 1997) (quoting Advisory Commission Comment to Rule 401). According to the TRA's own rules, evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the subject matter of the [proceeding] more probable or less probable than it would be without the evidence.” Chapter 1220-5-2-.01 (outlining rules of evidence in arbitration proceedings). *See also* Rule 401 of the Tennessee Rules of Evidence. The CAD should be required to admit or deny Request No. 25 and provide documents supporting its response.

Data Request No. 26 BellSouth's Answer to the CAD's Complaint identifies several CLEC tariffs which provide for late payment charges. *See Answer at 2 n.1.* For each company identified in that document, please state whether the CAD has attempted to investigate whether that company's late payment charge is just and reasonable or otherwise appropriate.

Here, the CAD objects and attempts to assert an investigative and prosecutorial privilege. BellSouth's question, however, simply asks whether or not the CAD has attempted to investigate. The question of whether or not the CAD has attempted to investigate another company with regard to the same issue is relevant and does not impinge on any of the CAD's privileges. If the CAD has not sought to investigate or challenge any late payments proposed by CLECs, the CAD should say so.

Data Request No. 29 Please produce any and all information received or considered by the CAD from any public or private entity in the southeastern United States concerning credit granting policies that are allegedly "comparable" to those of BellSouth.

The CAD failed to provide any response to this question, stating without explanation that the "Consumer Advocate Division will update this discovery response as necessary." Clearly, this is non-responsive. It is not for the CAD to unilaterally decide whether a later response is "necessary." The CAD should be ordered to answer the question.

Data Request No. 33 Please produce any and all criticism(s) and comments of any and all studies of customer payment patterns in the CAD's possession or of which the CAD has knowledge.

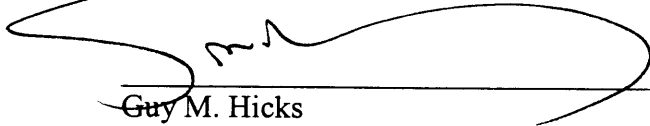
Here the CAD provided no response whatsoever to BellSouth's question, nor was any explanation given as to why no response was provided. The CAD should be ordered to answer the question.

III. CONCLUSION

For the foregoing reasons, the Authority should grant BellSouth's motion to compel the CAD to respond fully and fairly to BellSouth's discovery requests.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

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CERTIFICATE OF SERVICE

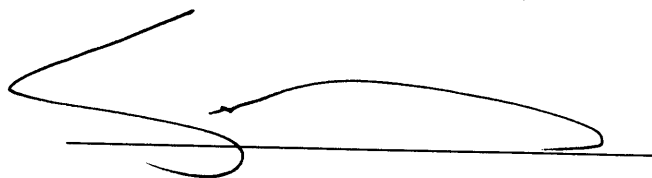
I hereby certify that on April 18, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight

Gary Hotvedt, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0500

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

L. Vincent Williams, Esquire
Office of Tennessee Attorney General
425 Fifth Avenue North
Nashville, Tennessee 37243

A handwritten signature in black ink, appearing to read 'L. Vincent Williams', is written over a horizontal line.